

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARSHALL LOSKOT,

Case No. 2:09-CV-00011-JAM-KJM

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

v.

GEO KADAVELIL MATHEWS, dba
ANTELOPE LIQUORS, MANJINDER
SINGH SANGHA, individually,
SANDEEP K. SANSHA,
individually, and DOES 1
through 50, inclusive,

Defendants.

_____/

This matter comes before the Court on Plaintiff Marshall Loskot's ("Plaintiff") motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (Doc. # 9). Defendants Geo Kadavelil Mathews, Antelope Liquors, Manjinder Singh Sangha, and Sandeep K. Sangha (collectively "Defendants") oppose the motion.

(Doc # 14). For the reasons set forth below,¹ Plaintiff's motion is DENIED.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from Plaintiff's October 10, 2008, visit to Antelope Liquors, a gas station and store, located in Red Bluff, California, and owned by Defendants Geo Kadavelil Mathews, Manjinder Singh Sangha, and Sandeep K. Sangha.

Plaintiff is a T10 paraplegic bound to his wheelchair since the accident that caused his condition in 1991. Plaintiff's Statement of Undisputed Facts ("SUF") ¶ 1. Plaintiff asserts he made the October 10, 2008, visit to Antelope Liquors for the purpose of purchasing gas and using the restroom facilities.

SUF ¶ 4. Plaintiff claims he visited the business prior to the October 10, 2008 incident, that he visits the area frequently, and that he intends to return to the store. SUF ¶ 6.

Plaintiff argues that on October 10, 2008 he struggled to overcome numerous architectural barriers that prevented him from enjoying full and equal access to Antelope Liquors. SUF ¶ 5. Specifically, Plaintiff asserts he could not enter the store without assistance and could not use the restroom because of the raised entrance to the facility. SUF ¶ 5. Plaintiff claims

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 230(g).

1 that prior to this suit he sent two letters to the business and
2 property owners of Antelope Liquors describing the problems he
3 encountered during his visit, but that he did not receive a
4 response to those letters. SUF ¶ 7.

5
6 On January 2, 2009, Plaintiff filed a complaint against
7 Defendants seeking injunctive relief and damages pursuant to the
8 American with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 *et*.
9 *seq.*, the California Health & Safety Code § 19955, *et seq.*,
10 California Civil Code § 54, *et seq.*, California's Unruh Civil
11 Rights Act ("Unruh Act"), California Civil Code §§ 51 *et seq.*,
12 and California Code of Regulations, Title 24, Chp. 11B. (Doc. #
13 1). According to Plaintiff, Defendants denied him full and
14 equal enjoyment in the use of Antelope Liquors and failed to
15 remove architectural barriers that violate federal and state
16 disability access standards as prescribed by the Americans with
17 Disabilities Act Accessibility Guidelines ("ADAAG") and
18 California's Title 24 ("Title 24").
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21 In the instant motion, Plaintiff seeks summary judgment
22 against Defendants. (Doc. # 9). Defendants argue that they
23 were in the midst of remodeling Antelope Liquors at the time of
24 the alleged incident and that the remodel plans and construction
25 were approved by the governmental agency charged with ADA
26 compliance. Defendants' Opposition Brief, Doc. # 14 ("Defs'
27 Opp.") at 2. Defendants also contend that Plaintiff has not
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1 proposed enough facts to allow the Court to determine if there
2 is compliance with the ADA and that Plaintiff's SUF is "littered
3 with improper legal conclusions." Id. at 6.

4
5 II. OPINION

6 A. Legal Standard

7 Summary judgment is proper "if the pleadings, the discovery
8 and disclosure materials on file, and any affidavits show that
9 there is no genuine issue as to any material fact and that the
10 movant is entitled to judgment as a matter of law." Fed. R. Civ.
11 P. 56(c)(2). Because the purpose of summary judgment "is to
12 isolate and dispose of factually unsupported claims or
13 defenses," Celotex Corp. v. Catrett, 477 U.S. 317, 323-324
14 (1986), "[i]f summary judgment is not rendered on the whole
15 action, the court should, to the extent practicable, determine
16 what material facts are not genuinely at issue." Fed. R. Civ. P.
17 56(d).

18
19
20 The moving party bears the initial burden of demonstrating
21 the absence of a genuine issue of material fact for trial.
22 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).
23 If the moving party meets its burden, the burden of production
24 then shifts so that "the non-moving party must set forth, by
25 affidavit or as otherwise provided in Rule 56, 'specific facts
26 showing that there is a genuine issue for trial.'" T.W. Elec.
27 Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,
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630 (9th Cir. 1987) (quoting Fed. R. Civ. P. 56(e)). The Court must view the facts and draw inferences in the manner most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

A "scintilla of evidence" is insufficient to support the non-moving party's position; "there must be evidence on which the jury could reasonably find for the [non-moving party]." Anderson, 477 U.S. at 252. Accordingly, this Court applies to either a defendant's or plaintiff's motion for summary judgment essentially the same standard as for a motion for directed verdict, which is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

B. The ADA

The ADA proscribes discrimination against individuals based on their disability. See 42 U.S.C. §§ 12101, *et seq.* The ADAAG provides "substantive standards for public facilities subject to the ADA, [and the] ADAAG standards define whether an architectural or other feature of a facility is a 'barrier' that discriminates against disabled persons in violation of the ADA." Wilson v. Norbreck, L.L.C., 2006 WL 2651139, at *1 (E.D. Cal. Sept. 15, 2006).

1 Plaintiff seeks summary judgment for the following 10
2 alleged violations of the ADA, citing non-compliance with ADAAG
3 regulations:

4
5 1. No posted tow-away signage, in violation of ADAAG 4.6.4.

6 Because there is no tow-away sign requirement in the
7 ADAAG, Plaintiff cannot demonstrate he is entitled to judgment
8 as a matter of law for this alleged violation. Accordingly,
9 Plaintiff's motion for summary judgment based on Defendants'
10 alleged failure to adhere to ADAAG 4.6.4, in violation of the
11 ADA, is denied.
12

13 2. Parking access aisle area has a cross slope in excess of
14 2%, in violation of ADAAG 4.6.3.

15 The 3 photographs in the "Site Inspection Report" put
16 forward as evidence of a violation of ADAAG 4.6.3 are
17 insufficient to determine whether Defendants failed to comply
18 with the ADAAG. The photographs only show a small portion of the
19 area being measured, making it impossible to tell where the
20 photographs were taken. Additionally, Plaintiff fails to provide
21 a description of how the measurements were procured. For these
22 reasons, Plaintiff did not meet his burden of proof, failing to
23 demonstrate the absence of a genuine issue of material fact as
24 to Defendants' non-compliance with the ADA, through ADAAG 4.6.3.
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1 3. Restroom entry threshold exceeds 1/2" requirement of
2 ADAAG 4.13.8.

3 The 2 photographs in the "Site Inspection Report" put
4 forward as evidence of a violation of ADAAG 4.13.8 are
5 insufficient to determine whether Defendants failed to comply
6 with the ADAAG. Like the photographs in support of the alleged
7 violation of ADAAG 4.6.3, these photographs only show a small
8 portion of the area being measured, making it impossible to tell
9 where the photographs were taken. Additionally, Plaintiff fails
10 to provide a description of how the measurements were procured.
11 Plaintiff has not met his burden of proof; accordingly,
12 Plaintiff's motion for summary judgment based on Defendants'
13 alleged failure to comply with ADAAG 4.13.8, in violation of the
14 ADA, is denied.
15

16 4. No posted accessibility signage on the restroom door, in
17 violation of ADAAG 4.30.7*(1).
18

19 Section 4.30.7*(1) requires compliance with section 4.1,
20 which only prescribes a signage requirement at "accessible
21 toilet and bathing facilities when not all are accessible."
22 (emphasis added). Notably, sections 4.22 (Toilet Rooms) and 4.23
23 (Bathrooms) say nothing about a signage requirement. Plaintiff
24 has failed to demonstrate that this section of the ADAAG
25 requires accessibility signage at Defendants' restroom facility.
26 Because Plaintiff has not shown this section applies to
27
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1 Defendants, Plaintiff cannot meet his burden of proof, and
2 summary judgment for a violation of the ADA, under ADAAG
3 4.30.7*(1), is denied.
4

5 5. Effort needed to open the store's front entrance door
6 exceeds maximum of 5 pounds of force, in violation of
7 ADAAG 4.13.11.

8 Because there is no maximum force requirement in the ADAAG
9 for exterior doors, Plaintiff cannot demonstrate he is entitled
10 to judgment as a matter of law for this alleged violation.
11 Accordingly, Plaintiff's motion for summary judgment based on a
12 Defendants' alleged failure to adhere to ADAAG 4.13.11, in
13 violation of the ADA, is denied.
14

15 6. Interior store counter space is not compliant with ADAAG
16 4.2.6.
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18 Section 4.2.6 requires a "maximum high side reach [of] 54
19 [inches]" The photograph provided by Plaintiff shows a
20 counter height of approximately 38", which would seem to support
21 Defendants' compliance with 4.2.6. However, Plaintiff has failed
22 to demonstrate whether this section of the statute even applies
23 to the interior counter space of Defendants' store. Moreover,
24 the 2 photographs provided on page 7 of the "Site Inspection
25 Report" are insufficient to prove Plaintiff's allegations, and
26 Plaintiff does not provide an explanation of how the
27 measurements demonstrate non-compliance with the ADAAG. For
28

1 these reasons, Plaintiff has not met his burden of proving the
2 absence of a genuine issue of material fact, and his motion for
3 summary judgment based on Defendants' failure to comply with
4 ADAAG 4.2.6, in violation of the ADA, is denied.
5

6 7. Minimum free floor space of 42" for wheel chairs is not
7 compliant with ADAAG 4.2.1.

8 Section 4.2.1 explicitly applies to passageways,
9 prescribing space requirements for "doorways, gates, and the
10 like, when . . . entered head-on." Plaintiff has failed to
11 demonstrate that this section applies to the free floor space
12 within Defendants' store, as the plain language of the statute
13 indicates it does not, because Plaintiff has provided nothing
14 more than a citation to this section of the statute.
15 Accordingly, summary judgment based on Defendants' failure to
16 comply with ADAAG 4.2.1, in violation of the ADA, is denied.
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19 8. Height and width of check-out counter violates ADAAG 7.2.

20 Plaintiff has failed to provide any authority
21 demonstrating that section 7.2 applies to Defendants' check-out
22 counter. Moreover, the 6 photographs provided in support of the
23 alleged violation are insufficient to prove the absence of a
24 genuine issue of material fact. One obvious problem with the
25 photographs is that none show the measuring tape touching the
26 floor as the measurement is taken. More importantly, Plaintiff
27 has failed to describe how the measurements depicted
28

1 affirmatively demonstrate a violation. Accordingly, Plaintiff's
2 motion for summary judgment based on Defendants' alleged failure
3 to comply with ADAAG 7.2, in violation of the ADA, is denied.

4
5 9. The restroom door handle is not compliant with ADAAG
6 4.13.9.

7 The photograph in the "Site Inspection Report" put
8 forward as evidence of a violation of ADAAG 4.13.9 is
9 insufficient to determine whether Defendants failed to comply
10 with the ADAAG. The photograph does not show the entire door,
11 but instead it only shows a door handle, making it impossible to
12 tell where the photograph was taken. Additionally, Plaintiff
13 fails to provide a description of how the pictured handle does
14 not comply with the ADAAG requirements. Plaintiff has not
15 demonstrated an absence of a genuine issue of material fact as
16 to Defendants' compliance with ADAAG 4.13.9; accordingly,
17 Plaintiff's motion for summary judgment is denied.

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19
20 10. There is no accessibility signage visibly mounted in
21 the store front, in violation of ADAAG 4.30.7*(1),
22 4.30.6.

23
24 As explained above under alleged violation number 4,
25 section 4.30.7*(1) requires compliance with section 4.1, which
26 only prescribes a signage requirement at "[a]ccessible entrances
27 when not all are accessible." (emphasis added). Plaintiff merely
28 cites this section to support the violation, therefore failing

1 to demonstrate that this section of the ADAAG requires visible
2 accessibility signage in Defendants' store front. Plaintiff's
3 claim under Section 4.30.6, which expressly prescribes "Mounting
4 Location and Height," is similarly deficient. Plaintiff merely
5 cites to this section without providing any support to
6 demonstrate why it applies to Defendants' store. Because
7 Plaintiff has failed to provide any support connecting these
8 sections of the ADAAG to this case, Plaintiff's motion for
9 summary judgment based on Defendants' alleged non-compliance
10 with ADAAG 4.30.7*(1) and 4.30.6, in violation of the ADA, is
11 denied.
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14 In sum, Plaintiff did not meet the requisite burden of
15 proof as to any of the alleged ADA violations; accordingly,
16 summary judgment is denied for each of Plaintiff's claims under
17 the ADA.
18

19 C. State Law Claims

20 Plaintiff moves for relief based on 10 alleged violations
21 of the Title 24, citing "CalDAG" in support of three of the
22 violations. CalDAG is not a legal authority; accordingly, the
23 Court will disregard any citation to it in support of a state
24 violation. See Sanford v. Del Taco, Inc., 2006 WL 2669351, at *2
25 (E.D. Cal. Sept. 18, 2006). Plaintiff seeks summary judgment for
26 the following alleged violations:
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1 1. No posted tow-away signage, in violation of Title 24,
2 §1129B.5.

3 Plaintiff has provided an incorrect citation in support
4 of the alleged violation, as the section cited here does not
5 exist in Title 24. Even if Plaintiff intended to cite § 1129B.4,
6 Plaintiff has failed to demonstrate that section, which
7 explicitly applies to "off-street parking facilities," applies
8 to Defendants' establishment. Accordingly, Plaintiff's motion
9 for summary judgment based on Defendants' alleged violation of
10 Title 24, § 1129B.5 is denied.
11
12

13 2. Parking access aisle area has a cross slope in excess of
14 2%, in violation of Title 24, § 1129B.4.4.

15 Plaintiff provides the same evidence here as in support
16 of the corresponding ADA violation, discussed under section B,
17 alleged violation 2, above. For the same reasons, Plaintiff's
18 evidence is insufficient to demonstrate the absence of a genuine
19 issue of material fact, and therefore, Plaintiff's motion for
20 summary judgment based on Defendants' alleged violation of Title
21 24, § 1129B.4.4 is denied.
22
23

24 3. Sidewalk around the restroom is raised with no ramps, in
25 violation of Title 24, § 1133B.8.1.

26 Section 1133B.8.1 applies to "Warning curbs" and
27 describes requirements for identifying "[a]brupt changes in
28 level." Plaintiff has failed to demonstrate how this section

1 supports the alleged violation, an excessive threshold entry to
2 the restroom. Accordingly, Plaintiff's motion for summary
3 judgment based on Defendants' alleged violation Title 24, §
4 1133B.8.1 is denied.
5

6 4. Grab bars in the restroom do not comply with Title 24, §
7 1115B.8.

8 Plaintiff has provided an incorrect citation in support
9 of the alleged violation, as Section 1115B.8 expressly applies
10 to "accessories," not grab bars. Even if Plaintiff intended to
11 cite section 1115B.7, which applies to "Grab bars, tub and
12 shower seats," there are no requirements within that section of
13 the statute for placement of grab bars. Instead, section 1115B.7
14 contains a table of "recommendations" for grab bar placement and
15 only mandates bar width and strength. Moreover, Plaintiff has
16 not provided support for his assumption that this section of the
17 statute applies to Defendants' restroom facility. Because
18 Plaintiff only provides a citation to section 1115B.8 in support
19 of his motion for summary judgment, Plaintiff has failed to meet
20 his burden of proof to show Defendants violated Title 24, §
21 1115B.8, and his motion is denied.
22
23
24

25 5. A minimum 48" long clear space was not provided in front
26 of the water closet, in violation of Title 24, §
27 1115B.7.2.
28

1 Again, Plaintiff has provided an incorrect citation in
2 support of the alleged violation, as Section 1115B.7.2 expressly
3 applies to "Grab bars, tub and shower seats." Other sections of
4 the statute that may apply to Defendants' restroom facility do
5 not prescribe a minimum "long clear space" in front of the water
6 closet. Accordingly, Plaintiff's motion for summary judgment for
7 Defendants' alleged violation of Title 24, § 1115B.7.2 is
8 denied, as Plaintiff has failed to meet his burden of proof.
9

10
11 6. A minimum of 28" from the edge of the water closet to the
12 lavatory edge was not provided, in violation of Title 24,
13 § 1115B.7.2.

14 As described above, this section is inapplicable here.
15 Even if Plaintiff intended to cite another section that may
16 apply to Defendants' restroom facility, nowhere does the statute
17 prescribe a distance between a lavatory and a water closet.
18 Therefore, Plaintiff has failed to meet his burden of proof, and
19 his motion for summary judgment based on Defendants' alleged
20 violation of Title 24, § 1115B.7.2 is denied.
21

22
23 7. Restroom entry threshold exceeds 1/2" requirement of
24 Title 24, § 1133B.2.4.1.

25 Plaintiff provides the same evidence here as in support
26 of the corresponding ADA violation, discussed under section B,
27 alleged violation 3, above. For the same reasons, Plaintiff's
28 evidence is insufficient to demonstrate the absence of a genuine

1 issue of material fact, and therefore, Plaintiff's motion for
2 summary judgment based on Defendants' alleged violation of Title
3 24, § 1133B.2.4.1 is denied.

4
5 8. No posted accessibility signage on the restroom door, in
6 violation of Title 24, § 1117B.5.8.1.2.

7 Section 1117B expressly applies to "all other buildings,"
8 where Section 1115B expressly covers restroom facilities.
9 Noticeably absent from section 1115B is a signage requirement
10 for restrooms. Plaintiff provides nothing more than a citation
11 to section 1117B.5.8.1.2, failing to demonstrate that this
12 section of the ADAAG even applies to Defendants' restroom
13 facility. Accordingly, Plaintiff cannot meet his burden of
14 proof, and summary judgment for Defendants' alleged violation of
15 Title 24, § 1117B.5.8.1.2 is denied.
16
17

18 9. Effort needed to open the store's front entrance door
19 exceeds maximum of 5 pounds of force, in violation of
20 Title 24, § 1133B.2.5.

21 Plaintiff has failed to provide evidence in support of
22 this alleged violation. Plaintiff's expert did not perform a
23 test demonstrating the amount of force required to open the
24 door, and Plaintiff's bare assertion is not enough to prevail on
25 summary judgment. Because Plaintiff cannot establish that he is
26 entitled to judgment as a matter of law for Defendants' alleged
27 violation of Title 24, § 1133B.2.5, summary judgment is denied.
28

1 10. There is no accessibility signage visibly mounted in
2 the store front, in violation of Title 24, §
3 1117B.5.8.1.2.
4

5 As discussed in this section under number 8 above,
6 Plaintiff has failed to demonstrate the applicability of this
7 section to Defendants' store. Section 1117B, which applies to
8 "all other buildings" and appears to be taken out of context,
9 cannot alone support an alleged violation of the ADA by
10 Defendants. Moreover, Section 1117B.5.1, the beginning of the
11 section containing 1117B.5.8.1.2, expressly applies to
12 situations "[w]hen new or additional signs and/or identification
13 devices are provided, or when existing signs and/or
14 identification devices are replaced or altered"
15 Plaintiff has not provided this Court with any authority
16 connecting this section of the statute to Defendants' store.
17 Plaintiff has failed to meet his burden of proof, and summary
18 judgment for Defendants' alleged violation of Title 24, §
19 1117B.5.8.1.2 is denied.
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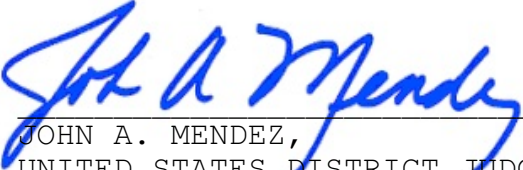
22 In sum, Plaintiff did not meet the requisite burden of
23 proof as to any of the alleged Title 24 violations; accordingly,
24 summary judgment is denied for each of Plaintiff's claims under
25 Title 24.
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III. ORDER

For the reasons set forth above, Plaintiff's motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: March 22, 2010



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE